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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION

10 BRIAN EDWARDS,) Case No. CV 08-08181 GAF (AN)
11 Petitioner,) MEMORANDUM AND ORDER
12 v.)
13 F.B. HAWS, WARDEN, et al.,)
14 Respondents.)
15

16 **I. Background**

17 On December 11, 2008, petitioner Brian Edwards, a state prisoner proceeding *pro se*,
18 filed his pending habeas petition pursuant to 28 U.S.C. §2254 ("§2254") in the Central
19 District of California, Western Division. Pursuant to the Court's duty to screen §2254
20 petitions,^{1/} the Court has reviewed the Petition and finds it is subject to summary dismissal
21 because it plainly appears from its face that Edwards is challenging the conditions of his
22 confinement, not the legality or duration of his 1997 conviction for attempted murder and
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24 ^{1/} See Rule 4 of the Rules Governing Section 2254 Cases in the United States District
25 Courts, 28 U.S.C. foll. §2254 ("if it plainly appears from the face of the petition and any
26 exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge
27 shall make an order for its summary dismissal and cause the petitioner to be notified");
28 Local Rule 72-3.2 (authorizing magistrate judge to prepare proposed order for summary
dismissal and proposed judgment for district judge if it plainly appears from the face of
petition that petitioner is not entitled to relief).

1 second degree robbery and the related 31-years-to-life prison sentence that he sustained in
2 case no. YA030468 of the California Superior Court for Los Angeles County. (Petition at
3 3.) Specifically, the five claims in the Petition establish Edwards is principally claiming
4 the respondents have violated his constitutional rights by: (1) misplacing numerous inmate
5 602 complaints that he has filed; (2) tampering with his mail; (3) denying him access to a
6 copying machine and the law library; (4) neglecting his medical needs; and, last but not
7 least, (5) "denying [him] access to look at a naked grown woman." (Petition at 6 - 10.)

8 II. Discussion

9 A. The Petition must be dismissed since it is not directed at Edwards' underlying 10 conviction or sentence.

11 A habeas corpus petition can only be used to challenge the legality or duration of a
12 prisoner's confinement; in contrast, a civil rights action is the proper mechanism for
13 challenging conditions of confinement. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir.
14 1991)(prisoner must bring condition of confinement claims by way of a civil rights
15 complaint brought pursuant to 42 U.S.C. §1983 ("§1983"), not a habeas corpus petition).
16 Since it plainly appears from the face of the Petition that Edwards is not challenging the
17 legality or duration of his underlying conviction and sentence, the Court finds the Petition
18 must be dismissed.

19 B. The Court declines to construe the Petition as a Civil Rights Complaint.

20 Under appropriate circumstances, district courts have the discretion to construe a
21 habeas petition as a civil rights complaint if it appears the allegations raise a viable
22 constitutional deprivation claim directed at the conditions of the petitioner's custodial
23 confinement instead of a challenge directed at the legality or duration of his conviction or
24 sentence. *See Preiser v. Rodriguez*, 411 U.S. 475, 500, 93 S.Ct. 1827 (1973). The Court
25 finds it would be inappropriate to construe Edwards' Petition as a prisoner civil rights
26 complaint for the following reasons.

27 Prisoner civil rights actions under §1983 are subject to different requirements than
28 federal habeas proceedings under §2254. The filing fee for a prisoner civil rights complaint

1 is \$350.00 compared to the substantially lower \$5.00 filing fee for habeas petitions. 28
2 U.S.C. §1914(a). Prisoners who wish to bring civil rights actions *in forma pauperis* must
3 also qualify for IFP status and become financially responsible for paying the full \$350.00
4 filing fee from their prison trust accounts. See 28 U.S.C. §1915(b)(1). Also, the Prison
5 Litigation Reform Act has amended 42 U.S.C. §1997e to provide that “[n]o action shall be
6 brought with respect to prison conditions under section 1983 of this title, or any other
7 Federal law, by a prisoner confined in any jail, prison, or other correctional facility until
8 such administrative remedies as are available are exhausted.” 42 U.S.C. §1997e(a). In
9 California, this means that a prisoner must go through the following levels of administrative
10 appeal before filing suit in federal court: (1) informal resolution (waived under certain
11 conditions); (2) formal written appeal on a California Department of Corrections (“CDC”)
12 602 inmate appeal form; (3) second level appeal to the institution head or designee; and (4)
13 third level appeal to the director of the CDC. Cal.Code Regs. Tit. 15, §3084.5; *Barry v.*
14 *Ratelle*, 985 F.Supp. 1235, 1237-38 (S.D. Cal. 1997). “If the district court concludes that
15 the prisoner has not exhausted nonjudicial remedies, the proper remedy is dismissal of the
16 claim without prejudice.” *Wyatt v. Terhune*, 315 F.3d 1108, 1120 (9th Cir. 2002). The
17 Supreme Court has held §1997e(a)’s exhaustion requirements apply to all claims relating
18 to prison life which do not implicate the duration of a prisoner’s sentence. *Porter v. Nussle*,
19 534 U.S. 516, 532, 122 S. Ct. 983, 992, 152 L.Ed.2d 12 (2002).

20 In order to make sure that a prisoner has complied with the foregoing exhaustion
21 requirements, this Court requires prisoners bringing §1983 civil rights actions to use the
22 Court-approved civil rights complaint form, which contains instructions that are tantamount
23 to general orders of this Court and require the inmate to “attach copies of papers related to
24 the grievance procedure.” Civil Rights Complaint Form CV-66, page 3; *see Brady v.*
25 *Attygala*, 196 F. Supp. 2d 1016, 1018 (C.D. Cal. 2002).

26 Edwards’ Petition is not prepared on this Court’s approved prisoner civil rights
27 complaint form. He has not paid the required \$350.00 filing fee to file a prisoner civil rights
28 complaint or demonstrated that he is entitled to proceed IFP. Nor has he authorized funds

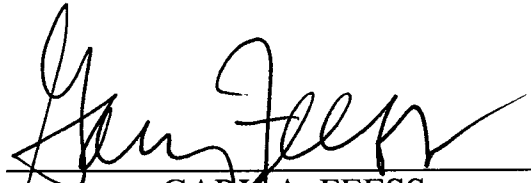
1 to be withdrawn from his prison trust account to pay for all or any part of the filing fee.
2 Therefore, the Court finds it is inappropriate to construe his petition as a prisoner civil rights
3 complaint.

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5 **III. Conclusion**

6 For the reasons set forth above, the petition is summarily dismissed without prejudice.
7 A judgment of dismissal of the entire action shall be entered accordingly.

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9 **IT IS SO ORDERED.**

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11 DATED: December 19, 2008



GARY A. FEESS
UNITED STATES DISTRICT JUDGE

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14 Presented by:

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Arthur Nakazato
17 United States Magistrate Judge
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